

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LINDA ELLIS, LINDA’S LYRICS, LLC)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
TCW Media, LLC)	
)	
Defendant.)	
_____)	
)	
)	
)	

PLAINTIFFS COMPLAINT

COME NOW Linda Ellis and Linda’s Lyrics, LLC (collectively "Plaintiffs") and file this *Complaint* against Quail Country Plantation, LLC. (“Defendant”). In support thereof, Plaintiff respectfully shows this Court the following:

I. SUMMARY OF CASE

1. This action arises from Defendant’s unlawful copying of Plaintiffs’ copyrighted works, “The Dash,” (“the Poem”), as well as Defendant’s unlawful use of Plaintiffs’ mark, THE DASH, in connection with Defendant’s activities.

II. PARTIES

2. Plaintiff Linda Ellis is an individual and author of many poems and books, including “The Dash” which she authored and copyrighted in 1996. She resides in Marietta, Georgia. She is also sole member of Linda’s Lyrics, LLC and owns several trademark registrations with the United States Patent and Trademark Association for LIVE YOUR DASH.

3. Defendant TCW Media, LLC posted the Poem on its website and distributed the poem to its clients and in materials handed to its clients at various events and functions. Defendant may be served at its principal address at 5111 Rogers Ave, Suite 600, Fort Smith, AR 72903.

III. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this cause pursuant to 28 U.S.C. § 1331, and such jurisdiction is exclusive of state courts pursuant to 28 U.S.C. § 1338 as this action arises under the U.S. Copyright Act of 1976, 17 U.S.C. § 101 et seq. and The Trademark Act of 1946, 45 U.S.C. § 1051, et seq.

5. This Court has personal jurisdiction over Defendant in that it committed illegal acts intended to and that did cause harm to Plaintiffs in the State of Georgia.

6. Venue is proper in the Atlanta Division of the United States District Court for the Northern District of Georgia under 28 U.S.C. §§ 1391 and 1400(a)

because Defendant is an entity subject to personal jurisdiction in this jurisdictional district and a substantial part of the events giving rise to the claims asserted herein occurred within the Northern District of Georgia.

IV. FACTUAL BACKGROUND

Plaintiff's Work

7. Ms. Ellis is a full time author and public speaker.

8. In 1996, Ms. Ellis wrote what has become her most famous work to date, the poem, "The Dash" ("The Poem").

9. Effective June 15, 1998, Ms. Ellis registered the copyright in The Poem with the U.S. Copyright Office; a copy of the registration certificate, No. TXu 858-108 is attached hereto as Exhibit A.

10. The Poem has been reprinted, with Ms. Ellis's permission and proper attribution to her as the author and copyright owner, in a number of books, including philosophical works and textbooks, as well as volumes of poetry. Ms. Ellis and her poetry, especially The Poem, have been featured on dozens of television and radio programs and in several national magazines, including Family Circle and U.S. News & World Report.

11. Also, since publication of The Poem, Linda Ellis has spoken to countless business, civic and religious organizations delivering her message for self-determination.

12. In 2005, Linda Ellis wrote the book, The Dash – Making a Difference with Your Life which has sold hundreds of thousands of copies and which includes The Poem.

13. In 2011, Linda Ellis authored the book, Live Your Dash, Registration No. TX0007454651 which features the Poem as well as other poems and works by Linda Ellis as a motivational guide providing inspiration, power and self-determination.

14. Linda Ellis and/or Linda's Lyrics own several trademarks for LIVE YOUR DASH with the United States Patent & Trademark Office, including Registrations Nos. 4198516, 4141860, 4141664, 4042342 for products which serve as reminders to maximize each and every day.

Defendant's Misconduct

15. Defendant posted the Poem on its website and distributed the poem to its clients and in materials handed to its clients at various events and functions.

16. The entire Poem is included, word for word, in the materials published by Defendant.

V. COUNT ONE – COPYRIGHT INFRINGEMENT

17. Plaintiffs re-allege and incorporate by reference all allegations and facts set forth herein.

18. Ms. Ellis' copyright in the Poem is valid and enforceable.

19. Defendant's inclusion of The Poem in its materials without permission of Plaintiffs constitutes copyright infringement.

20. Under 17 U.S.C. § 106, the foregoing activities of Defendant infringes the exclusive rights of Ms. Ellis, copyright owner of The Poem.

21. Defendant's infringement of Ms. Ellis's copyright makes it liable to Plaintiffs under 17 U.S.C. § 501.

22. Defendant's infringement of Ms. Ellis's copyright was knowing, deliberate and willful.

23. Plaintiffs are without an adequate remedy at law because Defendant's copyright infringement has and will cause irreparable injury and must be enjoined by this Court.

24. Furthermore, as Defendant's actions were willful and wanton, pursuant to 17 U.S.C. § 504, Plaintiffs seek statutory damages in an amount of up to \$150,000.00 per infringement.

25. In addition, pursuant to 17 U.S.C. § 505, Plaintiffs are entitled to a full recovery of their costs and reasonable attorneys' fees incurred in connection with this action.

VI. COUNT TWO – FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

26. Plaintiffs re-allege and incorporate by reference all allegations and facts set forth herein.

27. Plaintiffs have been conducting business under the marks THE DASH and LIVE YOUR DASH since at least 1996 and since that time have had countless speaking engagements and sold millions of dollars of products under this mark.

28. Defendant's use of THE DASH in association with its enterprise is likely to cause confusion as to the source and sponsorship of Defendant as the public will believe that Defendant is affiliated with the products and services offered by Plaintiffs and/or that Defendant made use of Plaintiffs' works with their express permission.

29. Defendant's unlawful, unauthorized and unlicensed use of The Poem and the mark THE DASH creates express and implied misrepresentations that its infringing services were created, authorized or approved by Plaintiffs, all to Defendant's gain causing Plaintiffs irreparable damage and injury.

30. Defendant's acts are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), in that their use of Plaintiffs' marks in connection with Defendants' goods and services in interstate commerce constitutes false designation of origin and unfair competition.

31. Plaintiffs have no adequate remedy at law. If Defendant's activities are not enjoined, Plaintiffs will continue to suffer irreparable harm and injury to their goodwill.

32. As a result of Defendant's activities, Plaintiffs have been damaged in an amount to be ascertained at trial.

33. Since Defendant's actions were willful, treble damages and all Plaintiffs' attorneys fees and costs should be awarded in connection with this action in accordance with 15 U.S.C. § 1117.

VII. COUNT THREE – TRADEMARK INFRINGEMENT UNDER GEORGIA COMMON LAW

34. Plaintiffs re-allege and incorporate by reference all allegations and facts set forth herein.

35. Plaintiffs have built up valuable goodwill in the marks THE DASH and LIVE YOUR DASH.

36. As a result of the fame associated with these marks, Defendant is trading off the goodwill established by Plaintiffs and misleading the public into assuming a connection with Defendant's products and services and Plaintiffs' products and services.

37. As a result of Defendant's activities, Plaintiffs have been damaged in an amount to be ascertained at trial.

**VIII. COUNT FOUR – UNFAIR COMPETITION UNDER GEORGIA
STATE LAW.**

38. Plaintiffs re-allege and incorporate by reference all allegations and facts set forth herein.

39. Plaintiffs have built up valuable goodwill in THE DASH and LIVE YOUR DASH Marks.

40. Defendant's use of Plaintiff's marks is likely to and does permit Defendant to palm off Defendant's products and services as those of Plaintiffs, all to the detriment of Plaintiffs and the unjust enrichment of Defendant.

41. Defendant's actions mislead the public as to the source of Defendant's products and services and falsely suggest a connection with Plaintiffs such that they constitute acts of unfair competition in violation of O.C.G.A. § 23-2-55.

42. Plaintiffs have no adequate remedy at law. If Defendant's activities are not enjoined, Plaintiffs will continue to suffer irreparable harm and injury to their goodwill.

43. As a result of Defendant's activities, Plaintiffs have been damaged in an amount to be ascertained at trial.

IX. COUNT FIVE – DECEPTIVE TRADE PRACTICES

44. Plaintiffs re- allege and incorporate by reference all allegations and facts set forth herein.

45. Defendant's use of THE DASH in connection with the advertising, promotion and sale of its services has unjustly enriched Defendant by enabling it to unfairly misappropriate the goodwill established by Plaintiffs in the marks and such acts are in violation against deceptive trade practices found at O.C.G.A. § 10-1-372 et seq.

46. Defendant's acts have damaged and diluted the part of Plaintiffs' goodwill inured in Plaintiffs' Marks.

47. Defendant had actual knowledge of Plaintiffs rights when it decided to use Plaintiffs' intellectual property in connection with its services; thus, Defendant willfully and deliberately infringed upon Plaintiffs' rights.

48. As a result of Defendant's acts, Plaintiffs have no adequate remedy at law. If Defendants' activities are not enjoined, Plaintiffs will continue to suffer irreparable harm, loss of reputation and injury to their goodwill.

49. In addition, Plaintiffs are entitled to pecuniary damages in an amount to be shown at a trial or hearing of this matter, plus all costs and attorneys' fees of bringing this action under O.C.G.A. § 10-1-373.

WHEREFORE, Plaintiffs respectfully request the following relief as to each of the above counts:

- a) The Court enter judgment in favor of Plaintiffs on all counts;
- b) The Defendant be permanently enjoined from further publication, distribution or dissemination of The Poem and/or any works derivative of The Poem.
- c) That Defendants be permanently enjoined from use of the marks, THE DASH in association with their products and services;
- d) That Defendant pay Plaintiffs statutory damages under 17 U.S.C. § 504 of up to \$150,000 per work, and pay Plaintiffs' attorneys' fees pursuant to 17 U.S.C. § 505.
- e) That Defendants compensate Plaintiffs for the injury caused to Plaintiffs goodwill in THE DASH and LIVE YOUR DASH marks in an amount to be shown in a trial or hearing of this matter which shall be at least the royalties typically received by Plaintiffs for use of The Dash and that these damages be trebled in accordance with 15 U.S.C. § 1117;
- f) That Defendant compensates Plaintiffs all costs and attorneys' fees associated with bringing this matter.

This 25th day of March, 2013.

Respectfully submitted,

KALKA & BAER, LLC

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CERTIFICATE OF TYPE SIZE AND STYLE

Counsel certifies that the size and style of type used in the foregoing document is Times New Roman 14 point.

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